उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(15)

मामला क्रमांक CrA No 1079 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

APPELLANT:
(In Jail)

Sudru, son of Lakhmu, aged 40 years, resident of Katiyarras, P.S. Dantewada, District Dantewada (Bastar) (C.G.)

-Versus-

RESPONDENT:

State of Chhattisgarh, Through P.S. Dantewada, Distt. Dantewada.

(Criminal Appeal under Section 374 (2) of the Cr.P.C.)

Division Bench: -

Hon'ble Shri L.C. Bhadoo &

Hon'ble Shri Sunil Kumar Sinha, JJ.

23-8-2007:-

Shri Suryakant Mishra, counsel for the appellant.

Shri Ashish Shukla, Additional Public Prosecutor with Shri Akhil Mishra, Panel Lawyer for the State/respondent.

Oral judgment dictated on *Dais*.

SUNIL KUMAR SINHA, J.

This appeal is directed against the judgment of conviction and order of sentence dated 6th September, 2001 passed by the Special Judge, Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act and Additional Sessions Judge, Bastar at Jagdalpur in S.T. No.317/2000 whereby the said Court, after holding the appellant guilty for commission of offence punishable under

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Section 302 of the I.P.C., sentenced him to undergo imprisonment for life & to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for one year.

The brief facts are that Janki Bai is the second wife of the accused. First wife of the accused has died. Janki Bai was married to the accused 7 years prior to the date of the incident. She was having 3 issues from the accused. Her eldest son Ajit (since deceased) was aged about 5 years. On 22-7-2000, the accused came to the house in drunken condition and he had quarrel with Janki Bai. On the said incident, Janki Bai took her other children and went to the house of her brother-in-law Sudru for sleeping in the night. The accused/appellant and their eldest son Ajit were only two persons in the house. On 23-7-2000, in the morning, she returned back to the house. She saw that Ajit was lying on mat and his body was covered with blanket. Janki Bai removed the blanket and saw that Ajit has died. Blood was oozing out from his mouth. On this, she called her father-in-law Lakhmu. They all saw that there was some injury on the neck of the deceased. Many other villagers also gathered there. They also saw the dead body. Ultimately, first information report Ex.P/1 was lodged in the Police Station Dantewada by Janki Bai. Merg intimation was lodged under Ex.P/13.

During the course of investigation, the investigating officer gave notice to the Panchas under Ex.P/4. Inquest on the dead

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

body of the deceased was prepared under Ex.P/5. In the police custody, the accused gave memorandum under Ex.P/6 regarding ornaments of his wife. In pursuance of the aforesaid memorandum, ornaments were seized under Ex.P/9. The identification of ornaments was conducted by Executive Magistrate under Ex.P/10. Site plan of the place of occurrence was prepared under Ex.P/15. The body of the deceased was sent for postmortem under requisition Ex.P/16. The postmortem was conducted by Dr. B.K. Tirki, who prepared his report Ex.P/16-A. He opined that cause of death was asphyxia due to throttling, which was homicidal in nature. During the course of postmortem, he noticed following symptoms and injuries:-

(i) Face bluish in colour,
(ii) Tongue bitten between upper and lower teeth,
(iii) Both eyes were swollen and conjunctiva are congested,
(iv) Froth was coming out from nostrils,
(v) Echymosis were present on the neck, 3 in number,
(vi) Head tilted towards right side.

On further examination, he found that there was fracture of base of his skull. About injuries on the neck, he gave his opinion that they were caused by finger like object and duration was about 12-18 hours. Injuries were ante mortem in nature.

After completion of usual investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Dantewada, who in

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

turn committed the case to the Court of Sessions Judge, Jagdalpur from where case was received on transfer by the Additional Sessions Judge, Jagdalpur, who conducted the trial and convicted the accused/appellant as aforesaid.

Learned Special Judge has based conviction on circumstantial evidence. According to him, there was some quarrel between husband and wife in the night due to which wife left the company of the husband along with her two children for sleeping in the house of brother-in-law and the deceased was left in the house of husband. When she returned back in the morning, she saw the dead body of the deceased lying in the house. After the report, it was found that death was homicidal. On these circumstances coupled with explanation given by the accused in his examination under Section 313 Cr.P.C. in which he stated that he has been falsely implicated in this case and his son deceased Ajit had died on account of illness, conviction of the accused is mainly based.

Learned counsel for the accused/appellant argues that evidence of mother of deceased namely, Janki Bai (PW-1) is not reliable. He also argues that apart from her evidence, there is no other evidence in this case, as nearly all other witnesses have turned hostile, therefore, conviction and sentence awarded to the appellant cannot be sustained.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

On the other hand, learned State counsel opposes the arguments and supports the judgment of conviction and order of sentence passed by the trial Court.

We have heard learned counsel for the parties at length and have also perused record of the Sessions case.

Admittedly, conviction of the appellant is based upon circumstantial evidence. So far as law in relation to circumstantial evidence is concerned, in the matter of **State of Goa V. Sanjay Thakran & Anr.**[1] the Apex Court, in the series of principles pertaining to circumstantial evidence and tests to be applied on the subject held and reiterated that it is a well settled proposition of law that when the case rests upon circumstantial evidence, such evidence must satisfy the following tests:-

> "(1) The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
>
> (2) Those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
>
> (3) The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else and

[1] 2007 (4) SBR 321

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

(4) The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

If we examine evidence of PW-1 Janki Bai, following circumstances are appearing against the appellant:-

- the appellant had come in drunken condition in the house, there was quarrel between the appellant and his wife in the fateful night due to which wife left the matrimonial house and went to sleep in the house of brother-in-law along with her two children;
- admittedly, the deceased and the appellant were only two persons left in the room on the fateful night,
- when the mother of the deceased returned back in the morning, she saw that boy was lying on the mat, his body was covered with blanket and the appellant was not present,
- when blanket was removed, she could see that the boy had died and he had also sustained injuries on his neck,
- the accused gave false explanation under Section 313 Cr.P.C. that the death of his son has occurred on account of

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

illness, whereas in the medical evidence, the doctor noticed many ante mortem injuries on the body of the deceased and has opined that cause of death was asphyxia as a result of throttling & there was fracture of base of his skull,

- the accused disappeared from the house along with ornaments of his wife which were recovered at the instance of the accused and were duly identified in the identification conducted by the Executive Magistrate.

So far as evidence against the appellant is concerned, his wife PW-1 Janki Bai has turned hostile. In the examination in chief, in 2-3 lines, she has deposed that her son Ajit has died on account of illness, but when she was cross-examined by the Government Advocate, after declaring her hostile, she has stated, vide para-2 of her deposition, that it is true that her son Ajit was sleeping along with his father. It is also true that she had left house of her husband. It is also true that there are many rooms in the house of her husband. When he assaulted her, after the assault, due to anger, she went to the different room. She has categorically admitted that deceased Ajit was sleeping in the room along with his father. She has further admitted that in the morning when she returned back to her house, she saw that the deceased was lying dead. She has also admitted that she had seen that body of the deceased was covered with blanket. She had removed blanket and had seen her son. She has also admitted

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

that after all these, she had gone to Kotwar and Patel of the village, thereafter they had gone to the police station. She has also admitted that the report was lodged in the police station by her. In para-3 of her deposition, she has admitted that she had participated in the identification of ornaments. She has further admitted that in the Tehsil Office she had identified one pair of silver Perpatti and one Guriya (ornament of neck which was fitted with 12 No. of golden bead). She has most specifically deposed in para-3 that when she had left her son with the appellant in the night, he was alright. When she returned back in the morning, she saw that he was lying dead in the house. She has also deposed that the deceased was lying at the same place where she had left him. Though, this witness has been declared hostile, but from the above evidence of this witness, following things are fully established:

- she was assaulted by her husband in the fateful night,
- on account of such assault, in anger, she left the house of her husband along with her two children and went to sleep in the house of her brother-in-law,
- her eldest son namely, Ajit was left by her along with the appellant in the room who was sleeping on the mat,

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

- when she returned back in the morning, she could see that body of her son was covered with blanket. She removed blanket and saw that son has died,
- the accused was not present in the morning in the house,
- a proceeding of identification was conducted by the Executive Magistrate and she had gone to Tehsil Office where she had identified her ornaments.

Investigating Officer namely Rajendra Pathak has been examined as PW-7. Apart from other evidence pertaining to the investigation, he has deposed vide para-8 of his evidence that on 23-7-2000, in presence of witnesses, he took the accused in his custody and has prepared arrest memo Ex.P/7. On the same day, the accused had given information pertaining to Perpatti and necklace, which were kept by him in the house of his younger brother namely, Ludru. Memorandum to this effect has been proved as Ex.P/6. Vide para-9, he has deposed that on such memorandum aforesaid articles were seized at the instance of the accused and seizure memo Ex.P/9 was prepared accordingly.

G.R. Kulhara, who was working as Tehsildar, has been examined as PW-4. He has deposed that he conducted identification in Tehsil Karyalaya, Dantewada on 26-8-2000. His identification was pertaining to Perpatti, silver ornaments and golden necklace. After mixing other articles of similar type, these

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

articles were put to identification to Janki Bai, who had rightly identified those articles. He has proved his identification memo as Ex.P/10. Therefore, it is established that in the morning, the accused had left his house and he had also taken ornaments of his wife. The said ornaments were hidden in the house of his brother, which were recovered at his instance. Ultimately, they were identified by his wife. Apart from above, if we look into examination of the accused recorded under Section 313 Cr.P.C., in reply to last question i.e. question No.20, the accused has given explanation that his son has died on account of illness and he has been falsely implicated in this case.

In the matter of **Trimukh Maroti Kirkan V. State of Maharashtra**[2] the Apex Court held that "In a case based on circumstantial evidence where no eye-witness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete." The Apex Court has also referred to decisions in the matters of *State of Tamil Nadu V. Rajendran* [(1999) 8 SCC 679 (para-6)], *State of U.P. V. Dr. Ravindra Prakash Mittal* [AIR 1992 SC 2045 (para-40)], *State of Maharashtra V. Suresh* [(2000) 1 SCC 471 (para-27)], *Ganesh Lal V. State of Rajasthan* [(2002) 1 SCC 731

[2] 2006 AIR SCW 1300

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

(para-15)] and *Gulab Chand V. State of M.P.* [(1995) 3 SCC 574 (para-4)].

After examining the entire material available on record, we are of the considered opinion that chain of circumstances, in this case, is complete. There is hardly any doubt of coming any third person to commit murder of the deceased. To sum up, we may say that on the fateful night, firstly there was quarrel between husband and wife, thereafter wife left the company of the husband along with her two children and went to sleep in the house of brother-in-law. Her eldest son Ajit (deceased) was lying along with father in the house. He was sleeping. When wife came in the morning in the house, she saw dead body of her son lying on the mat where it was left by her in the night, which was covered by blanket. There were injuries on the body of the deceased. Husband was missing from the house. Ornaments of the deceased were also missing. Ornaments were recovered at the instance of husband and they were duly identified by wife. Husband has offered no explanation regarding death of his son, rather he has given false information in this regard, he has stated that death has occurred on account of illness. It has been proved by medical evidence that death was homicidal in nature, apart from that, many injuries were present on the neck, there was fracture of lower portion of the skull. Therefore, all these circumstances lead to only conclusion that the accused was culprit in the crime in

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
Barve	question and there can be hardly any room for taking any other view. In the result, we do not find any force in this appeal, same deserves to be dismissed and is accordingly dismissed. **Sd/-** **L.C. Bhadoo** **Judge**	**Sd/-** **Sunil Kumar Sinha** **Judge**